

(d) Information sharing

The Municipal Ombudsman shall publish on the website of the Environmental Protection Agency—

- (1) general information relating to—
 - (A) the technical assistance referred to in subsection (b)(1);
 - (B) the financial assistance referred to in subsection (c)(1);
 - (C) the flexibility referred to in subsection (c)(2); and
 - (D) any resources developed by the Administrator related to integrated plans under section 402(s) of the Federal Water Pollution Control Act [33 U.S.C. 1342(s)]; and
- (2) a copy of each permit, order, or judicial consent decree that implements or incorporates such an integrated plan.

(Pub. L. 115–436, § 4, Jan. 14, 2019, 132 Stat. 5560.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (b)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION

Section was enacted as part of the Water Infrastructure Improvement Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

DEFINITIONS

Pub. L. 115–436, § 2, Jan. 14, 2019, 132 Stat. 5558, provided that: “In this Act [see Short Title of 2019 Amendment note set out under section 1251 of Title 33, Navigation and Navigable Waters]:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(2) MUNICIPALITY.—The term ‘municipality’ has the meaning given that term in section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362).”

SUBCHAPTER IV—FEDERAL PERMITTING IMPROVEMENT

§ 4370m. Definitions

In this subchapter:

(1) Agency

The term “agency” has the meaning given the term in section 551 of title 5.

(2) Agency CERPO

The term “agency CERPO” means the chief environmental review and permitting officer of an agency, as designated by the head of the agency under section 4370m–1(b)(2)(A)(iii)(I) of this title.

(3) Authorization

The term “authorization” means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency

or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with section 4370m–2(c)(3)(A) of this title, a State agency.

(4) Cooperating agency

The term “cooperating agency” means any agency with—

- (A) jurisdiction under Federal law; or
- (B) special expertise as described in section 1501.6 of title 40, Code of Federal Regulations (as in effect on December 4, 2015).

(5) Council

The term “Council” means the Federal Infrastructure Permitting Improvement Steering Council¹ established under section 4370m–1(a) of this title.

(6) Covered project**(A) In general**

The term “covered project” means any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, carbon capture, or any other sector as determined by a majority vote of the Council that—

- (i)(I) is subject to NEPA;
- (II) is likely to require a total investment of more than \$200,000,000; and
- (III) does not qualify for abbreviated authorization or environmental review processes under any applicable law;
- (ii) is covered by a programmatic plan or environmental review developed for the primary purpose of facilitating development of carbon dioxide pipelines; or
- (iii) is subject to NEPA and the size and complexity of which, in the opinion of the Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require—

- (I) authorization from or environmental review involving more than 2 Federal agencies; or
- (II) the preparation of an environmental impact statement under NEPA.

(B) Exclusion

The term “covered project” does not include—

- (i) any project subject to section 139 of title 23; or
- (ii) any project subject to section 2348 of title 33.

(C) Inclusion

For purposes of subparagraph (A), construction of infrastructure for carbon capture includes construction of—

- (i) any facility, technology, or system that captures, utilizes, or sequesters carbon dioxide emissions, including projects for direct air capture (as defined in para-

¹So in original. Probably should be “Federal Permitting Improvement Steering Council”.

graph (6)(B)(i) of section 7403(g) of this title); and

(ii) carbon dioxide pipelines.

(7) Dashboard

The term “Dashboard” means the Permitting Dashboard required under section 4370m-2(b) of this title.

(8) Environmental assessment

The term “environmental assessment” means a concise public document for which a Federal agency is responsible under section 1508.9 of title 40, Code of Federal Regulations (or successor regulations).

(9) Environmental document

(A) In general

The term “environmental document” means an environmental assessment, finding of no significant impact, notice of intent, environmental impact statement, or record of decision.

(B) Inclusions

The term “environmental document” includes—

(i) any document that is a supplement to a document described in subparagraph (A); and

(ii) a document prepared pursuant to a court order.

(10) Environmental impact statement

The term “environmental impact statement” means the detailed written statement required under section 102(2)(C) of NEPA [42 U.S.C. 4332(2)(C)].

(11) Environmental review

The term “environmental review” means the agency procedures and processes for applying a categorical exclusion or for preparing an environmental assessment, an environmental impact statement, or other document required under NEPA.

(12) Executive Director

The term “Executive Director” means the Executive Director appointed by the President under section 4370m-1(b)(1)(A) of this title.

(13) Facilitating agency

The term “facilitating agency” means the agency that receives the initial notification from the project sponsor required under section 4370m-2(a) of this title.

(14) Inventory

The term “inventory” means the inventory of covered projects established by the Executive Director under section 4370m-1(c)(1)(A) of this title.

(15) Lead agency

The term “lead agency” means the agency with principal responsibility for an environmental review of a covered project under NEPA and parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

(16) NEPA

The term “NEPA” means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(17) Participating agency

The term “participating agency” means an agency participating in an environmental review or authorization for a covered project in accordance with section 4370m-2 of this title.

(18) Project sponsor

The term “project sponsor” means an entity, including any private, public, or public-private entity, seeking an authorization for a covered project.

(Pub. L. 114-94, div. D, title XLI, §41001, Dec. 4, 2015, 129 Stat. 1741; Pub. L. 116-260, div. S, §102(d)(1), Dec. 27, 2020, 134 Stat. 2250.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969 or NEPA, referred to in pars. (6)(A), (11), and (15) and defined in (16), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fixing America’s Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

2020—Par. (6)(A). Pub. L. 116-260, §102(d)(1)(A)(i), inserted “carbon capture,” after “manufacturing,” in introductory provisions.

Par. (6)(A)(ii), (iii). Pub. L. 116-260, §102(d)(1)(A)(ii)–(iv), added cl. (ii) and redesignated former cl. (ii) as (iii).

Par. (6)(C). Pub. L. 116-260, §102(d)(1)(B), added subpar. (C).

SAVINGS CLAUSE

Pub. L. 114-94, div. A, title XI, §11503(b), Dec. 4, 2015, 129 Stat. 1692, provided that: “Except as expressly provided in section 41003(f) [42 U.S.C. 4370m-2(f)] and subsection (o) of section 139 of title 23, United States Code, the requirements and other provisions of title 41 of this Act [probably means title XLI of div. D of Pub. L. 114-94, 42 U.S.C. 4370m et seq.] shall not apply to—

“(1) programs administered now and in the future by the Department of Transportation or its operating administrations under title 23, 46, or 49, United States Code, including direct loan and loan guarantee programs, or other Federal statutes or programs or projects administered by an agency pursuant to their authority under title 49, United States Code; or

“(2) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348).”

DEVELOPMENT OF CARBON CAPTURE, UTILIZATION, AND SEQUESTRATION REPORT, PERMITTING GUIDANCE, AND REGIONAL PERMITTING TASK FORCE

Pub. L. 116-260, div. S, §102(d)(2), Dec. 27, 2020, 134 Stat. 2250, provided that:

“(A) DEFINITIONS.—In this paragraph:

“(i) CARBON CAPTURE, UTILIZATION, AND SEQUESTRATION PROJECTS.—The term ‘carbon capture, utilization, and sequestration projects’ includes projects for direct air capture (as defined in paragraph (6)(B)(i) of section 103(g) of the Clean Air Act (42 U.S.C. 7403(g))).

“(ii) EFFICIENT, ORDERLY, AND RESPONSIBLE.—The term ‘efficient, orderly, and responsible’ means, with respect to development or the permitting process for carbon capture, utilization, and sequestration projects and carbon dioxide pipelines, a process that promotes environmental, health, and safety protections while maintaining a process that is completed in an expeditious manner.

“(B) REPORT.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 27, 2020], the Chair of the Council on Environmental Quality (referred to in this section as the ‘Chair’), in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Transportation, the Executive Director of the Federal Permitting Improvement Council, and the head of any other relevant Federal agency (as determined by the President), shall prepare a report that—

“(I) compiles all existing relevant Federal permitting and review information and resources for project applicants, agencies, and other stakeholders interested in the deployment and impact of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines, including—

“(aa) the appropriate points of interaction with Federal agencies;

“(bb) clarification of the permitting responsibilities and authorities among Federal agencies; and

“(cc) best practices and templates for permitting in an efficient, orderly, and responsible manner, including through improved staff capacity and training at Federal permitting agencies;

“(II) inventories current or emerging activities that transform captured carbon dioxide into a product of commercial value, or as an input to products of commercial value;

“(III) inventories existing initiatives and recent publications that analyze or identify priority carbon dioxide pipelines needed to enable efficient, orderly, and responsible development of carbon capture, utilization, and sequestration projects at increased scale;

“(IV) identifies gaps in the current Federal regulatory framework for the deployment of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines;

“(V) identifies Federal financing mechanisms available to project developers; and

“(VI) identifies public engagement opportunities through existing laws, including under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(ii) SUBMISSION; PUBLICATION.—The Chair shall—

“(I) submit the report under clause (i) to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce, the Committee on Natural Resources, and the Committee on Transportation and Infrastructure of the House of Representatives; and

“(II) as soon as practicable, make the report publicly available.

“(C) GUIDANCE.—

“(i) IN GENERAL.—After submission of the report under subparagraph (B)(ii), but not later than 1 year after the date of enactment of this Act [Dec. 27, 2020], the Chair shall submit guidance consistent with that report to all relevant Federal agencies that—

“(I) facilitates reviews associated with the deployment of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines; and

“(II) supports the efficient, orderly, and responsible development of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines.

“(ii) REQUIREMENTS.—

“(I) IN GENERAL.—The guidance under clause (i) shall address applicable requirements under—

“(aa) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

“(bb) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

“(cc) the Clean Air Act (42 U.S.C. 7401 et seq.);

“(dd) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

“(ee) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

“(ff) division A of subtitle III of title 54, United States Code (formerly known as the ‘National Historic Preservation Act’);

“(gg) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

“(hh) the Act of June 8, 1940 (16 U.S.C. 668 et seq.) (commonly known as the ‘Bald and Golden Eagle Protection Act’);

“(ii) chapter 601 of title 49, United States Code (including those provisions formerly cited as the Natural Gas Pipeline Safety Act of 1968 (Public Law 90–481; 82 Stat. 720) and the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96–129; 93 Stat. 1003)); and

“(jj) any other Federal law that the Chair determines to be appropriate.

“(II) ENVIRONMENTAL REVIEWS.—The guidance under clause (i) shall include direction to States and other interested parties for the development of programmatic environmental reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for carbon capture, utilization, and sequestration projects and carbon dioxide pipelines.

“(III) PUBLIC INVOLVEMENT.—The guidance under clause (i) shall be subject to the public notice, comment, and solicitation of information procedures under section 1506.6 of title 40, Code of Federal Regulations (or a successor regulation).

“(iii) SUBMISSION; PUBLICATION.—The Chair shall—

“(I) submit the guidance under clause (i) to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce, the Committee on Natural Resources, and the Committee on Transportation and Infrastructure of the House of Representatives; and

“(II) as soon as practicable, make the guidance publicly available.

“(iv) EVALUATION.—The Chair shall—

“(I) periodically evaluate the reports of the task forces under subparagraph (D)(v) and, as necessary, revise the guidance under clause (i); and

“(II) each year, submit to the Committee on Environment and Public Works of the Senate, the Committee on Energy and Commerce, the Committee on Natural Resources, and the Committee on Transportation and Infrastructure of the House of Representatives, and relevant Federal agencies a report that describes any recommendations for rules, revisions to rules, or other policies that would address the issues identified by the task forces under subparagraph (D)(v).

“(D) TASK FORCES.—

“(i) ESTABLISHMENT.—Not later than 18 months after the date of enactment of this Act [Dec. 27, 2020], the Chair shall establish not less than 2 task forces, which shall each cover a different geographical area with differing demographic, land use, or geological issues—

“(I) to identify permitting and other challenges and successes that permitting authorities and project developers and operators face in permitting projects in an efficient, orderly, and responsible manner; and

“(II) to improve the performance of the permitting process and regional coordination for the purpose of promoting the efficient, orderly, and responsible development of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines.

“(ii) MEMBERS AND SELECTION.—

“(I) IN GENERAL.—The Chair shall—

“(aa) develop criteria for the selection of members to each task force; and

“(bb) select members for each task force in accordance with item (aa) and subclause (II).

“(II) MEMBERS.—Each task force—

“(aa) shall include not less than 1 representative of each of—

“(AA) the Environmental Protection Agency;
 “(BB) the Department of Energy;
 “(CC) the Department of the Interior;
 “(DD) the Pipeline and Hazardous Materials Safety Administration;
 “(EE) any other Federal agency the Chair determines to be appropriate;
 “(FF) any State that requests participation in the geographical area covered by the task force;
 “(GG) developers or operators of carbon capture, utilization, and sequestration projects or carbon dioxide pipelines; and
 “(HH) nongovernmental membership organizations, the primary mission of which concerns protection of the environment;
 “(bb) at the request of a Tribal or local government, may include a representative of—
 “(AA) not less than 1 local government in the geographical area covered by the task force; and
 “(BB) not less than 1 Tribal government in the geographical area covered by the task force; and
 “(cc) shall include 1 expert in each of the following fields—
 “(AA) health and environmental effects, including exposure evaluation; and
 “(BB) pipeline safety.

“(iii) MEETINGS.—
 “(I) IN GENERAL.—Each task force shall meet not less than twice each year.
 “(II) JOINT MEETING.—To the maximum extent practicable, the task forces shall meet collectively not less than once each year.
 “(iv) DUTIES.—Each task force shall—
 “(I) inventory existing or potential Federal and State approaches to facilitate reviews associated with the deployment of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines, including best practices that—
 “(aa) avoid duplicative reviews to the extent permitted by law;
 “(bb) engage stakeholders early in the permitting process; and
 “(cc) make the permitting process efficient, orderly, and responsible;
 “(II) develop common models for State-level carbon dioxide pipeline regulation and oversight guidelines that can be shared with States in the geographical area covered by the task force;
 “(III) provide technical assistance to States in the geographical area covered by the task force in implementing regulatory requirements and any models developed under subclause (II);
 “(IV) inventory current or emerging activities that transform captured carbon dioxide into a product of commercial value, or as an input to products of commercial value;
 “(V) identify any priority carbon dioxide pipelines needed to enable efficient, orderly, and responsible development of carbon capture, utilization, and sequestration projects at increased scale;
 “(VI) identify gaps in the current Federal and State regulatory framework and in existing data for the deployment of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines;
 “(VII) identify Federal and State financing mechanisms available to project developers; and
 “(VIII) develop recommendations for relevant Federal agencies on how to develop and research technologies that—
 “(aa) can capture carbon dioxide; and
 “(bb) would be able to be deployed within the region covered by the task force, including any projects that have received technical or financial assistance for research under paragraph (6) of section 103(g) of the Clean Air Act (42 U.S.C. 7403(g)).
 “(v) REPORT.—Each year, each task force shall prepare and submit to the Chair and to the other task forces a report that includes—

“(I) any recommendations for improvements in efficient, orderly, and responsible issuance or administration of Federal permits and other Federal authorizations required under a law described in subparagraph (C)(ii)(I); and

“(II) any other nationally relevant information that the task force has collected in carrying out the duties under clause (iv).

“(vi) EVALUATION.—Not later than 5 years after the date of enactment of this Act [Dec. 27, 2020], the Chair shall—

“(I) reevaluate the need for the task forces; and

“(II) submit to Congress a recommendation as to whether the task forces should continue.”

PLACEMENT IN UNITED STATES CODE

Pub. L. 114–94, div. D, title XLI, §41014, Dec. 4, 2015, 129 Stat. 1762, provided that: “The Office of the Law Revision Counsel is directed to place sections 41001 through 41013 of this title in chapter 55 of title 42, United States Code, as subchapter IV.”

EX. ORD. NO. 13766. EXPEDITING ENVIRONMENTAL REVIEWS AND APPROVALS FOR HIGH PRIORITY INFRASTRUCTURE PROJECTS

Ex. Ord. No. 13766, Jan. 24, 2017, 82 F.R. 8657, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct as follows:

SECTION 1. *Purpose.* Infrastructure investment strengthens our economic platform, makes America more competitive, creates millions of jobs, increases wages for American workers, and reduces the costs of goods and services for American families and consumers. Too often, infrastructure projects in the United States have been routinely and excessively delayed by agency processes and procedures. These delays have increased project costs and blocked the American people from the full benefits of increased infrastructure investments, which are important to allowing Americans to compete and win on the world economic stage. Federal infrastructure decisions should be accomplished with maximum efficiency and effectiveness, while also respecting property rights and protecting public safety and the environment. To that end, it is the policy of the executive branch to streamline and expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects, especially projects that are a high priority for the Nation, such as improving the U.S. electric grid and telecommunications systems and repairing and upgrading critical port facilities, airports, pipelines, bridges, and highways.

SEC. 2. *Identification of High Priority Infrastructure Projects.* With respect to infrastructure projects for which Federal reviews and approvals are required, upon request by the Governor of a State, or the head of any executive department or agency (agency), or on his or her own initiative, the Chairman of the White House Council on Environmental Quality (CEQ) shall, within 30 days after a request is made, decide whether an infrastructure project qualifies as a “high priority” infrastructure project. This determination shall be made after consideration of the project’s importance to the general welfare, value to the Nation, environmental benefits, and such other factors as the Chairman deems relevant.

SEC. 3. *Deadlines.* With respect to any project designated as a high priority under section 2 of this order, the Chairman of the CEQ shall coordinate with the head of the relevant agency to establish, in a manner consistent with law, expedited procedures and deadlines for completion of environmental reviews and approvals for such projects. All agencies shall give high priority to completing such reviews and approvals by the established deadlines using all necessary and appropriate means. With respect to deadlines established consistent with this section that are not met, the head of the relevant agency shall provide a written expla-

nation to the Chairman explaining the causes for the delay and providing concrete actions taken by the agency to complete such reviews and approvals as expeditiously as possible.

SEC. 4. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) All actions taken pursuant to this order shall be consistent with requirements and authorities to protect intelligence and law enforcement sources and methods. Nothing in this order shall be interpreted to supersede measures established under authority of law to protect the security and integrity of specific activities and associations that are in direct support of intelligence and law enforcement operations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

EX. ORD. NO. 13807. ESTABLISHING DISCIPLINE AND ACCOUNTABILITY IN THE ENVIRONMENTAL REVIEW AND PERMITTING PROCESS FOR INFRASTRUCTURE PROJECTS

Ex. Ord. No. 13807, Aug. 15, 2017, 82 F.R. 40463, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent, it is hereby ordered as follows:

SECTION 1. *Purpose.* America needs increased infrastructure investment to strengthen our economy, enhance our competitiveness in world trade, create jobs and increase wages for our workers, and reduce the costs of goods and services for our families. The poor condition of America's infrastructure has been estimated to cost a typical American household thousands of dollars each year. Inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations, have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment. More efficient and effective Federal infrastructure decisions can transform our economy, so the Federal Government, as a whole, must change the way it processes environmental reviews and authorization decisions.

SEC. 2. *Policy.* It is the policy of the Federal Government to:

(a) safeguard our communities and maintain a healthy environment;

(b) ensure that Federal authorities make informed decisions concerning the environmental impacts of infrastructure projects;

(c) develop infrastructure in an environmentally sensitive manner;

(d) provide transparency and accountability to the public regarding environmental review and authorization decisions;

(e) be good stewards of public funds, including those used to develop infrastructure projects, and avoid duplicative and wasteful processes;

(f) conduct environmental reviews and authorization processes in a coordinated, consistent, predictable, and timely manner in order to give public and private investors the confidence necessary to make funding decisions for new infrastructure projects;

(g) speak with a coordinated voice when conducting environmental reviews and making authorization decisions; and

(h) make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years.

SEC. 3. *Definitions.* The terms of this order shall be applied consistently with those defined under 42 U.S.C. 4370m and implementing guidance to the maximum extent possible. The following definitions shall specifically apply:

(a) "Authorization" means any license, permit, approval, finding, determination, or other administrative decision issued by a Federal department or agency (agency) that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of an infrastructure project, including any authorization under 42 U.S.C. 4370m(3).

(b) "CAP Goals" means Federal Government Priority Goals established by the Government Performance and Results Act (GPRA) Modernization Act of 2010, Public Law 111-352, 124 Stat. 3866, and commonly referred to as Cross-Agency Priority (CAP) Goals.

(c) "Federal Permitting Improvement Steering Council" or "FPISC" means the entity established under 42 U.S.C. 4370m-1.

(d) "Infrastructure project" means a project to develop the public and private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from fossil, renewable, nuclear, and hydro sources; electricity transmission; broadband Internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; and other sectors as may be determined by the FPISC.

(e) "Major infrastructure project" means an infrastructure project for which multiple authorizations by Federal agencies will be required to proceed with construction, the lead Federal agency has determined that it will prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the project sponsor has identified the reasonable availability of funds sufficient to complete the project.

(f) "Permitting timetable" means an environmental review and authorization schedule, or other equivalent schedule, for a project or group of projects that identifies milestones—including intermediate and final completion dates for action by each agency on any Federal environmental review or authorization required for a project or group of projects—that is prepared by the lead Federal agency in consultation with all cooperating and participating agencies.

SEC. 4. *Agency Performance Accountability.* Federal agencies should follow transparent and coordinated processes for conducting environmental reviews and making authorization decisions. These processes must include early and open coordination among Federal, State, tribal, and local agencies and early engagement with the public. Holding Federal agencies accountable for their progress on implementing the policy set forth in section 2 of this order should, among other things, produce measurably better environmental outcomes with respect to infrastructure development.

(a) *Performance Priority Goals.*

(1) *CAP Goal.* A CAP Goal is a Federal tool for accelerating progress in priority areas that require active collaboration among multiple agencies to overcome organizational barriers and to achieve better performance than one agency could achieve on its own. Within 180 days of the date of this order, the Director of the Office of Management and Budget (OMB), in consultation with the FPISC, shall establish a CAP Goal on Infrastructure Permitting Modernization so that, where permitted by law:

(A) Federal environmental reviews and authorization processes for infrastructure projects are consistent, coordinated, and predictable; and

(B) the time for the Federal Government's processing of environmental reviews and authorization

decisions for new major infrastructure projects should be reduced to not more than an average of approximately 2 years, measured from the date of the publication of a notice of intent to prepare an environmental impact statement or other benchmark deemed appropriate by the Director of OMB.

(ii) *Agency Goals.* All Federal agencies with environmental review, authorization, or consultation responsibilities for infrastructure projects shall modify their Strategic Plans and Annual Performance Plans under the GPRA Modernization Act of 2010 to include agency performance goals related to the completion of environmental reviews and authorizations for infrastructure projects consistent with the new CAP Goal on Infrastructure Permitting Modernization. The agencies shall integrate the achievement of these performance goals into appropriate agency personnel performance plans, such as those of the agency Chief Environmental Review and Permitting Officers (CERPOs) or other appropriate officials, consistent with guidance to be provided by OMB, in consultation with the Office of Personnel Management. Progress on these goals shall be reviewed and analyzed by agency leadership, pursuant to the GPRA Modernization Act of 2010.

(b) *Accountability.* Within 180 days of the establishment of the CAP Goal on Infrastructure Permitting Modernization, as described in subsection (a) of this section, or such longer period of time as determined by the Director of OMB, OMB, in consultation with the FPISC, shall issue guidance for establishing a performance accountability system to facilitate achievement of the CAP Goal.

(i) *Tracking of Major Infrastructure Projects.* The performance accountability system shall track each major infrastructure project. The performance accountability system shall include, at a minimum, assessments of the agency's performance with respect to each of the following areas, as applicable:

(A) whether major infrastructure projects are processed using the "One Federal Decision" mechanism, as described in subsection 5(b) of this order;

(B) whether major infrastructure projects have a permitting timetable;

(C) whether major infrastructure projects follow an effective process that automatically elevates instances in which permitting timetable milestones are missed or extended, or are anticipated to be missed or extended, to appropriate senior agency officials;

(D) whether agencies are meeting the established milestones in the permitting timetable;

(E) the time it takes to complete the processing of environmental reviews and authorizations for each major infrastructure project; and

(F) the costs of the environmental reviews and authorizations for each major infrastructure project.

(ii) *Scoring.* The accountability system shall include a scoring mechanism that shall follow, at a minimum, the following procedures:

(A) agencies will submit information to OMB, consistent with existing reporting mechanisms to the maximum extent possible, on the assessment areas described in subsection (b)(i) of this section;

(B) at least once per quarter, OMB will produce a scorecard of agency performance and overall progress toward achieving CAP Goal targets;

(C) where an agency's inability to meet a permitting timetable milestone results in a significant delay of the project timeline, after consulting with the project sponsor and relevant agencies, agencies will submit (based on OMB guidance) an estimate of the delay's costs to the project; and

(D) the Director of OMB will consider each agency's performance during budget formulation and determine whether appropriate penalties, including those authorized at 23 U.S.C. 139(h)(7) and 33 U.S.C. 2348(h)(5), must or should be imposed, to the extent required or permitted by law, for those that significantly fail to meet a permitting timetable milestone or in other situations deemed appropriate by the Director of OMB after considering the causes of any poor performance.

(iii) *Best Practices.* Agencies shall implement the techniques and strategies the FPISC annually identifies as best practices pursuant to 42 U.S.C. 4370m-1(c)(2)(B), as appropriate. The performance accountability system shall track and score agencies on the incorporation and implementation of appropriate best practices for all infrastructure projects, including the implementation of such best practices at an agency's field level.

SEC. 5. *Process Enhancements.* In furtherance of the policy described in section 2 of this order, Federal agencies shall follow a more unified environmental review and authorization process.

(a) *Processing of Major Infrastructure Projects.* In processing environmental reviews and authorizations for major infrastructure projects, Federal agencies shall:

(i) use "One Federal Decision" described in subsection (b) of this section;

(ii) develop and follow a permitting timetable, which shall be reviewed and updated at least quarterly by the lead Federal agency in consultation with Federal cooperating and participating agencies; and

(iii) follow an effective process that automatically elevates instances where a permitting timetable milestone is missed or extended, or is anticipated to be missed or extended, to appropriate senior agency officials of the lead Federal agency and the cooperating and participating Federal agency or agencies to which the milestone applies.

(b) *One Federal Decision.*

(i) Each major infrastructure project shall have a lead Federal agency, which shall be responsible for navigating the project through the Federal environmental review and authorization process, including the identification of a primary Federal point of contact at each Federal agency. All Federal cooperating and participating agencies shall identify points of contact for each project, cooperate with the lead Federal agency point of contact, and respond to all reasonable requests for information from the lead Federal agency in a timely manner.

(ii) With respect to the applicability of NEPA to a major infrastructure project, the Federal lead, cooperating, and participating agencies for each major infrastructure project shall all record any individual agency decision in one Record of Decision (ROD), which shall be coordinated by the lead Federal agency unless the project sponsor requests that agencies issue separate NEPA documents, the NEPA obligations of a cooperating or participating agency have already been satisfied, or the lead Federal agency determines that a single ROD would not best promote completion of the project's environmental review and authorization process. The Federal lead, cooperating, and participating agencies shall all agree to a permitting timetable that includes the completion dates for the ROD and the federally required authorizations for the project.

(iii) All Federal authorization decisions for the construction of a major infrastructure project shall be completed within 90 days of the issuance of a ROD by the lead Federal agency, provided that the final EIS includes an adequate level of detail to inform agency decisions pursuant to their specific statutory authority and requirements. The lead Federal agency may extend the 90-day deadline if the lead Federal agency determines that Federal law prohibits the agency from issuing its approval or permit within the 90-day period, the project sponsor requests that the permit or approval follow a different timeline, or the lead Federal agency determines that an extension would better promote completion of the project's environmental review and authorization process.

(iv) The Council on Environmental Quality (CEQ) and OMB shall develop the framework for implementing One Federal Decision, in consultation with the FPISC.

(A) The framework should be consistent with the model processes established under 42 U.S.C. 4370m-2, 23 U.S.C. 139, 33 U.S.C. 2348, the 2015 "Red Book" (officially entitled "Synchronizing Environmental Reviews for Transportation and Other Infrastructure

Projects”), and CEQ guidance on efficient and timely environmental reviews under NEPA.

(B) The framework shall also include guidance on the development of permitting timetables by the lead Federal agencies, in collaboration with Federal cooperating and participating agencies. Permitting timetables shall identify estimated intermediate and final completion dates for all environmental reviews and authorizations that are reasonably anticipated as being needed for a project, including the process for granting extensions of any established dates. The guidance shall specify that lead Federal agencies need not include the estimated intermediate and final completion dates of any such reviews or authorizations until the design of a project has sufficiently advanced so that they can be developed. In such cases, the guidance shall instruct lead Federal agencies to estimate when the project’s design will be advanced enough to determine such dates. The timelines shall account for any federally required decisions or permits that are assumed by, or delegated to, State, tribal, or local agencies and the extent to which any approval or permit to be issued by a Federal agency is dependent upon the issuance of such a decision or permit.

(C) CEQ and OMB shall also develop guidance for applying One Federal Decision whenever the lead agency is a State, tribal, or local agency exercising an assignment or delegation of an agency’s NEPA responsibilities.

(c) *Dashboard*. All projects subject to 23 U.S.C. 139 and “covered projects” under 42 U.S.C. 4370m shall be tracked on the Dashboard established under 42 U.S.C. 4370m–2(b). Other projects or classes of projects subject to special environmental review and authorization streamlining processes similar to those referenced in this subsection may also be tracked on the Dashboard at the discretion of the FPISC Executive Director. The dates for milestones of all projects tracked on the Dashboard shall be updated monthly, or on another appropriate timeline as may be determined by the FPISC Executive Director.

(d) *Executive Order 13766*. For purposes of implementing Executive Order 13766 of January 24, 2017 (Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects), all infrastructure projects that meet the criteria for, and are subject to, 23 U.S.C. 139, 33 U.S.C. 2348, or 42 U.S.C. 4370m–4370m–12 shall qualify as high priority projects under Executive Order 13766. Other projects or classes of projects subject to special environmental review and authorization streamlining processes, similar to those referenced in this subsection as may be determined by the FPISC Executive Director in consultation with OMB and CEQ, shall also qualify as high priority infrastructure projects under Executive Order 13766. The CEQ Chairman’s responsibilities under sections 2 and 3 of Executive Order 13766 shall be satisfied by referring the project to the FPISC Executive Director, the Secretary of Transportation, or the Assistant Secretary of the Army for Civil Works, as appropriate.

(e) *Council on Environmental Quality*.

(i) *Directives*. Within 30 days of the date of this order, the CEQ shall develop an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process. Such actions should include issuing such regulations, guidance, and directives as CEQ may deem necessary to:

(A) ensure optimal interagency coordination of environmental review and authorization decisions, including by providing for an expanded role and authorities for lead agencies, more clearly defined responsibilities for cooperating and participating agencies, and Government-wide applicability of NEPA decisions and analyses;

(B) ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient;

(C) provide for agency use, to the maximum extent permitted by law, of environmental studies, analysis,

and decisions conducted in support of earlier Federal, State, tribal, or local environmental reviews or authorization decisions; and

(D) ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, including by using CEQ’s authority to interpret NEPA to simplify and accelerate the NEPA review process.

(ii) *Dispute Resolution*. Except where dispute resolution processes are otherwise provided for in law, including under 42 U.S.C. 4370m–2, or by Executive Order or other Presidential directive, upon request of a lead Federal agency, cooperating agency, or participating agency, CEQ may mediate interagency disputes arising between Federal agencies concerning Federal environmental review or authorization decisions for any infrastructure project pertaining to any environmental law, regulation, order or policy, and shall facilitate resolution of any conflicting positions of the relevant agencies.

(iii) *Agency Procedures*. CEQ shall form and lead an interagency working group, consisting of the Director of OMB, agency CERPOs, and such other representatives of agencies as CEQ deems appropriate. The working group shall review the NEPA implementing regulations and other environmental review and authorization processing policies of agencies that are members of the FPISC to identify impediments to efficient and effective environmental reviews and authorizations for infrastructure projects. The working group shall also identify those agencies that require an action plan to address identified impediments. Based on this review, agencies shall develop action plans that set forth the actions they will take and timelines for completing those actions, and they shall submit those action plans to CEQ and OMB for comment. Each agency’s action plan shall, at a minimum, establish procedures for a regular review and update of categorical exclusions, where appropriate.

(f) *Federal Permitting Improvement Steering Council*.

(i) *Organizational Support*. Unless otherwise determined by the Director of OMB, the General Services Administration (GSA) shall provide necessary administrative and organizational support to the FPISC, including personnel, procurement, and budget support. The GSA Administrator, or the head of another agency designated by the Director of OMB, may delegate any authority to the FPISC Executive Director necessary for the operation and administration of the FPISC and the Office of the Executive Director, and the Executive Director may redelegate these authorities, as appropriate.

(ii) *Additional Duties*. In addition to the duties and responsibilities charged to the FPISC Executive Director under 42 U.S.C. 4370m–4370m–12 and this order, the FPISC Executive Director may, upon request of a FPISC member agency or a project sponsor, work with the lead agency or any cooperating and participating agencies to facilitate the environmental review and authorization process for any infrastructure project regardless of whether the project is a “covered project” under 42 U.S.C. 4370m, including by resolving disputes and promoting early coordination. The FPISC Executive Director, the Director of OMB, or the Chairman of CEQ may establish any appropriate policies or procedures concerning the FPISC Executive Director’s facilitation of the environmental review and authorization process under this subsection. Agencies must cooperate with the FPISC Executive Director with respect to the implementation of these additional duties.

(g) *Energy Corridors*. The Departments of the Interior and Agriculture, as appropriate, shall be the lead agencies for facilitating the identification and designation of energy right-of-way corridors on Federal lands for Government-wide expedited environmental review for the development of energy infrastructure projects.

(h) The Department of the Interior shall provide to OMB a strategy and recommendations for a multi-agency reorganization effort that would further the aims of this order. OMB, in consultation with the De-

partment of the Interior, shall coordinate with the heads of other agencies affected to incorporate the strategy, as appropriate, into the comprehensive reorganization plan developed under Executive Order 13781 of March 13, 2017 (Comprehensive Plan for Reorganizing the Executive Branch).

SEC. 6. Executive Order 13690 of January 30, 2015 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), is revoked.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 4370m-1. Federal Permitting Improvement Council

(a) Establishment

There is established the Federal Permitting Improvement Steering Council.

(b) Composition

(1) Chair

The Executive Director shall—

- (A) be appointed by the President; and
- (B) serve as Chair of the Council.

(2) Council members

(A) In general

(i) Designation by head of agency

Each individual listed in subparagraph (B) shall designate a member of the agency in which the individual serves to serve on the Council.

(ii) Qualifications

A councilmember¹ described in clause (i) shall hold a position in the agency of deputy secretary (or the equivalent) or higher.

(iii) Support

(I) In general

Consistent with guidance provided by the Director of the Office of Management and Budget, each individual listed in subparagraph (B) shall designate 1 or more appropriate members of the agency in which the individual serves to serve as an agency CERPO.

(II) Reporting

In carrying out the duties of the agency CERPO under this subchapter, an agency CERPO shall report directly to a deputy secretary (or the equivalent) or higher.

(B) Heads of agencies

The individuals that shall each designate a councilmember under this subparagraph are as follows:

- (i) The Secretary of Agriculture.
- (ii) The Secretary of the Army.
- (iii) The Secretary of Commerce.
- (iv) The Secretary of the Interior.
- (v) The Secretary of Energy.
- (vi) The Secretary of Transportation.
- (vii) The Secretary of Defense.
- (viii) The Administrator of the Environmental Protection Agency.
- (ix) The Chairman of the Federal Energy Regulatory Commission.
- (x) The Chairman of the Nuclear Regulatory Commission.
- (xi) The Secretary of Homeland Security.
- (xii) The Secretary of Housing and Urban Development.
- (xiii) The Chairman of the Advisory Council on Historic Preservation.
- (xiv) Any other head of a Federal agency that the Executive Director may invite to participate as a member of the Council.

(3) Additional members

In addition to the members listed in paragraphs (1) and (2), the Chairman of the Council on Environmental Quality and the Director of the Office of Management and Budget shall also be members of the Council.

(c) Duties

(1) Executive Director

(A) Inventory development

The Executive Director, in consultation with the Council, shall—

- (i) not later than 180 days after December 4, 2015, establish an inventory of covered projects that are pending the environmental review or authorization of the head of any Federal agency;
- (ii)(I) categorize the projects in the inventory as appropriate, based on sector and project type; and
- (II) for each category, identify the types of environmental reviews and authorizations most commonly involved; and
- (iii) add a covered project to the inventory after receiving a notice described in section 4370m-2(a)(1) of this title.

(B) Facilitating agency designation

The Executive Director, in consultation with the Council, shall—

- (i) designate a facilitating agency for each category of covered projects described in subparagraph (A)(ii); and
- (ii) publish the list of designated facilitating agencies for each category of projects in the inventory on the Dashboard in an easily accessible format.

(C) Performance schedules

(i) In general

Not later than 1 year after December 4, 2015, the Executive Director, in consultation with the Council, shall develop recommended performance schedules, including intermediate and final completion dates, for environmental reviews and authorizations most commonly required for each category of covered projects described in subparagraph (A)(ii).

¹ So in original.